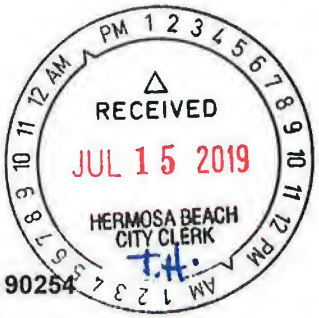


PRR-19-000774

City of Hermosa Beach
1315 Valley Drive, Hermosa Beach, CA 90254
310.318-0203 - Fax 310.372-6186
Email: recordsrequest@hermosabch.org

Received By: Tanesha Hudson
Referred To: _____
Date Referred: _____

Public Records Request

The City of Hermosa Beach encourages public participation in the governing process and provides reasonable accessibility to all public records except those documents which are exempt from disclosure by express provisions of law or considered confidential or privileged under the law. The City is under no obligation to respond to requests which are not focused or specific. The City may withhold documents which are exempt from disclosure under state or federal law, including the attorney—client privilege or any other applicable privilege. The City, in accordance with Government Code Section 6253(b), has ten (10) days to respond to any request for public documents by indicating whether or not the documents exist and will be made available. Actual production of the documents may take somewhat longer depending upon their ease of availability and staff workload. To assist us in providing a timely response to your request, please fill out the form below and indicate the specific record/document you wish to review.

Name (please print): Kelly Hernandez	**Email:** hernandez@history.ucla.edu
Address:	**Phone:**
City:	**Fax:**

Record or Document Requested:
To assist the City with your request, please identify each requested record/document separately. Please be as specific as possible. Non specific inquiries may cause responses to be delayed or may prove to be burdensome and therefore the City may not be able to respond. (Additional sheets may be used) **Submit all requests to the City Clerk's Office.**

see Attached

Photocopies are $0.20 per page (Mailing fee, if applicable is $3.00 plus postage). Fees must be paid before records are released.

I agree to pay all applicable fees and charges per the City Council Resolution of Fees for any copies I request of the above mentioned document. *Accepted method of payment:* Cash or check. Credit card accepted in person only.

Signature **Date**

For Departmental Use Only:

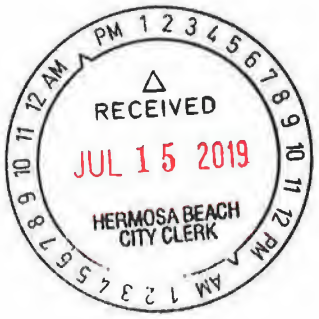
Action Requested:
_____ *Review Only*
_____ *Copies Requested*

Action Taken:
_____ *Document Reviewed*
_____ *Copies Provided*
_____ *Refusal/Reason* _____

By _____ *Date* _____
_____ *Non-Existent Document*
_____ *Other (Please Explain)*

For City Clerk's Use Only:
Date Requestor Notified _____ *Notified By:* _____ *Date Picked Up or Mailed* _____

BUNCHE
Ralph J. Bunche Center for African American Studies at UCLA



(Via email only to tjohnson@hermosapolice.org)

Hermosa Beach Police Department
540 Pier Ave, Hermosa Beach, CA 90254

July 13, 2019

Re: Request for Arrest Data

Dear Hermosa Beach Police Department Records Unit:

CA PRA 6254(f) Section 3 requires the release of the home addresses for all arrestees when the requester makes the request for scholarly purposes and pledges under penalty of perjury that the data will not be used for commercial purposes. CA PRA 6254 (F) Section 1 requires the release of "the full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds."

Based upon CA PRA 6254(f) Section 3 as well as CA PRA(f) Section 1, I am requesting the information listed below, in electronic format, for all persons arrested by the Hermosa Beach Police Department between January 1, 2010 – June 30, 2019. I pledge under penalty of perjury that the data will not be used for commercial purposes. I swear under penalty of perjury that this request is being made for scholarly purposes. I am willing to pay any reasonable fees required to fulfill this request. Please send the following information in an electronic format. If the records are kept in a database, they should preferably be exported to an excel or csv file.

- name;
- booking number;
- occupation;
- physical description, including date of birth, race, and gender
- time and date of arrest;
- time and date of booking;
- location of arrest, including street name, street number, city, state, and zip code.
- amount of bail set;
- time, date, manner, and location of release;
- all charges the individual is held upon, including any outstanding warrants from other jurisdictions and parole or probation holds; and
- home address, including street number, street name, city, state and zip

warrants from other jurisdictions and parole or probation holds; and

- home address, including street number, street name, city, state and zip code.

Please send your response to this PRA request to hernandez@history.ucla.edu.

All my best,

Professor Kelly Lytle Hernandez
Departments of History and African-American Studies at UCLA
Director, Ralph J. Bunche Center for African American Studies at UCLA
Director, Million Dollar Hoods

Supplemental Information Regarding the Above PRA Request
Submitted by Professor Kelly Lytle Hernandez (UCLA) for Arrest Records

Government Code Section 6254(F) Mandates the Release of the Requested Information

Government Code Section 6254(F) Mandates the Release of the Requested Information

Section 6254(f) provides an exemption for:

1. Records of complaints to, or investigations conduct by any state or local police agency, **or**
2. Any investigatory or security files compiled by any other state or local police agency, **or**
3. Any investigatory or security files complied by any other state or local agency for correctional, law enforcement, or licensing purposes.

To balance the public's need for information against the public's interest in ensuring that law enforcement agencies were able to efficiently do their jobs, the legislature did not require the release of records covered by the exemption. Instead, it mandated the disclosure of certain information held by law enforcement agencies, which it deemed, on balance, essential for the public to have access to. Specifically, Section 6254(f), subdivisions (1)-(3) states that:

"[S]tate and local law enforcement agencies **shall make public** the following information…:

(1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) …the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved….

(3) … the current address of every individual arrested by the agency . . . if the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose…."

There Is No "Cotemporaneous" Limitation on the Requested Information

Nothing in Section 6254(f) purports to limit the information that must be disclosed to that which the agency deems to be "contemporaneous." In fact, in *Fredericks v. Superior Court* (2015) 233 Cal.App.4th 209, 229-30 ("*Fredericks*") the California Court of Appeal rejected that very claim, and overturning the outdated authority cited in the denial, *County of Los Angeles v. Superior Court* (*Kusar*) (1993) 18 Cal.App.4th 588.

Kusar was decided prior to the 1995 CPRA amendments and its conclusions were largely based on the language and legislative history of the older version of the statute. *Fredericks,* 233 Cal. App. 4th at 231. While the 1993 version of the CPRA required disclosure of the "**current address** ... of every individual arrested by the agency" and the "**current address**" of victims named in citizen complaints or requests for assistance, **the 1995 amendments removed all references to**

App. 4th at 231. While the 1993 version of the CPRA required disclosure of the "**current address** ... of every individual arrested by the agency" and the "**current address**" of victims named in citizen complaints or requests for assistance**, the 1995 amendments removed all references to "current"** information in the text of sections 6254(f). *Id.* at 231 (emphasis added). As a result, "[t]he main terms expressly relied upon by the *[Kusar]* court ... to support its conclusions regarding an imposed time limitation upon disclosure obligations are no longer in the statute." *Fredericks,* at 232, 234 (finding that "there is no basis in the plain language of the statute to read into it any 60-day limitation on access to disclosable information").

Additionally, Kusar was decided prior to the enactment of Proposition 59, a constitutional amendment that added Article I, Section 3(b) to the California Constitution. That provision confirmed the public's "right of access to information concerning the conduct of the people's business" and mandated that any "statute, court rule, or other authority...shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access." Thus, Section 6254(f) must be read as broadly as possible in favor of public access, which squarely negates any attempt to read any temporal limitation into its disclosure requirements.

Any Cost Must be Limited to the Agency's Direct Cost of Duplication

To further the lofty goals underlying the CPRA, government agencies are required to provide access to public records without charging taxpayers twice, reflecting the fundamental principle that when taxpayers fund the creation of records in the first instance, the public should not be double-billed when requesting to inspect those very records. (Gov't Code § 6253(a).) If the requester then wants to obtain a physical copy of the record, agencies may only charge a fee which covers the "direct cost of duplication." (Gov't Code § 6253(b) [copies of records must be made promptly available to any person upon payment of "fees covering direct costs of duplication."])

The court confirmed this rule in *North County Parents Org. v. Department of Education* (1994) 23 Cal.App.4th 144, 147 ("*North County Parents*"). In that case, the court struck down an attempt by the Department to charge $0.25 per page, finding that the agency's charge exceeded its "direct costs of duplication" because it included recovery of "staff time involved in searching the records, reviewing records for information exempt from disclosure under law, and deleting such exempt information." Id. at 146. The court found that the term "direct cost of duplication" was limited to "the cost of running the copy machine, and conceivably also the expense of the person operating it." Id.

In so holding, the court analyzed the legislative evolution of the fee provision in the CPRA to find that it had been narrowed several times to limit the government's ability to charge a requester excessive fees. "The original wording, adopted in 1968 was that 'a reasonable fee' could be charged. In 1975 an amendment limited the 'reasonable fee' to not more than $.10 per page. An amendment in 1976 deleted 'reasonable fee' and inserted instead 'the actual cost of providing the copy.' Finally, the present version of the statute was adopted in 1981 limiting the fee to the 'direct costs of duplication.' Thus, it can be seen that the trend has been to limit, rather than to broaden, the base upon which the fee may be calculated." Id. at 147-148 (internal citations omitted.)

An agency's inability to recover ancillary costs associated with requests for copies of public records was again affirmed in *Los Angeles Unified Sch. Dist. v. Sup. Ct.* (2007) 151 Cal.App.4th 759. The court observed that the CPRA mandates the agency to provide copies of public records "upon the payment of fees to cover duplication costs, or statutory fee," finding "nonreimbursable indirect costs are not significant in light of [the public agency's] constitutionally mandated governmental function to disclose public records." Id. at 770. "[T]he purpose of the CPRA is to have openness in government and to enable full disclosure of public records. This policy is enshrined in the Constitution." Id. at 776. Similarly, in *Fredericks v. Sup. Ct.* (2015) 233 Cal.App.4th 209, 238, the court found that the ancillary costs of retrieving, inspecting, and handling material to be prepared for disclosure may not be charged to the requester unless the

Cal.App.4th 209, 238, the court found that the ancillary costs of retrieving, inspecting, and handling material to be prepared for disclosure may not be charged to the requester unless the agency must generate records to produce information. These authorities preclude charging for access to existing information held by public agencies, such as the information requested in this case.

Section 6253.9 does not provide any indication that the Legislature intended to change this long-standing rule. Prior to its addition, California was one of only 16 states without guidelines addressing how electronic records could be accessed by the public. AB 2799, which created Section 6253.9, sought to modernize the CPRA by requiring agencies to produce electronic records in the form in which they are held by the agency. Thus, the goal was to make it easier to access electronic records by mandating that agencies produce electronic versions of those records.

To that end, Section 6253.9 limits what an agency can charge for electronic records. Section 6253.9(a)(2) states that agencies must provide electronic records in the requested format and can only recover "the direct cost of producing a copy of a record in an electronic format." Additionally, if the requester seeks the electronic record in a different format, "each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format." § 6253.9(a)(2).

When the Senate Judiciary Committee analyzed AB 2799, it noted the Legislature's decision to impose the same fees standard for electronic records as physical records was justified because taxpayers fund creating records in the first instance, and the public should not be double-billed for seeking to inspect records. "Thus, the bill provides that the cost of duplicating a record in electronic format would be the direct cost of producing that record in electronic format, i.e., the cost of copying the CD or copying records stored in a computer into disks."

The presumed effect of this change was that electronic records could be produced at little to no cost to the requester. AB 2799 was anticipated to "make it easier and faster for members of the public to obtain public records from public agencies and, in some situations, may make it less expensive to do so, especially with respect to those public records that can be obtained in electronic format."] Allowing public agencies to make access to information subject to astronomical fees under Section 6253.9 would disturb the core principle that the duty and financial burden to execute the CPRA falls to the agency.

The Request is Not Overbroad

The CPRA provides no "overbroad" exemption from disclosure. Instead, the CPRA only permits nondisclosure where the agency can demonstrate "that the record in question is exempt under express provisions of this chapter **or** that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record."

Since there is no express provision that exempts "overbroad" requests, to deny this request, you would have to demonstrate that the request was so overbroad and the public interest in disclosure so minimal that, on balance, the agency should not have to comply.
In other words, the CPRA is based on the premise that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." Gov't Code §6250. The CPRA "establishes a presumptive right of access to any record created or maintained by a public agency that relates in any way to the business of the public agency...." *Sander v. State Bar* (2013) 58 Cal.4th 300, 323. "[T]he burden of showing that nondisclosure is justified is on the agency seeking to withhold the requested record...." *San Gabriel Tribune v. Sup. Ct.* (1983) 143 Cal. App.3d 762, 773; see also CBS Broadcasting, Inc. v. Sup. Ct. (2001) 91 Cal.App.4th 892, 908 ["[t]he burden of proof is on the proponent of nondisclosure...."]

Gabriel Tribune v. Sup. Ct. (1983) 143 Cal. App.3d 762, 773; see also CBS Broadcasting, Inc. v. Sup. Ct. (2001) 91 Cal.App.4th 892, 908 ["[t]he burden of proof is on the proponent of nondisclosure...."]

"There is nothing in the Public Records Act to suggest that a records request must impose **no** burden on the government agency." *N. Cal. Police Practices Project v. Craig* (1979) 90 Cal.App.3d 116, 124 (emphasis added). "Undoubtedly, the requirement of segregation casts a tangible burden on governmental agencies and the judiciary. Nothing less will suffice, however, if the underlying legislative policy of the [CPRA] favoring disclosure is to be implemented faithfully." *Id*; s*ee also State Bd. of Equalization v. Sup. Ct.* (1992) 10 Cal.App.4th 1177, 1190 (the CPRA "contemplates there will be some burden in complying with a records request, the only question being (in the case of nonexempt material) whether the burden is so onerous as to clearly outweigh the public interest in disclosure."]

Nor should any agency be allowed to second guess the Legislature's judgment simply by claiming burden. "Unless that judgment runs afoul of the Constitution it is not our province to declare that the statutorily required disclosures are inadequate or that the statutory exemption from disclosure is too broad. Nor is it our province to say that the approach the Legislature chose is inferior [ ], or to substitute one approach for the other." *Williams v. Sup. Ct.* (1993) 5 Cal.4th 337, 361; *see also Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385, 1440. The Legislature has chosen to require disclosure of the information it set out in Section 6254(f) and has presumably balanced the burden of disclosure of this information against the public interest in the information. If an agency is unhappy with the costs or time it must incur to comply with the Legislative mandate, those complaints are properly directed to the Legislature, but would not justify nondisclosure. *N. Cal. Police Practices Project, supra,* 90 Cal.App.3d 116, 124 ["[i]f the burden becomes too onerous, relief must be sought from the Legislature."]

Second, while the CPRA requires no more than an idle curiosity, the California Supreme Court has already found that the public's interest in law enforcement is particularly great. "In order to maintain trust in its police department, the public must be kept fully informed of the activities of its peace officers." *Commission on Peace Officer Standards & Training v. Sup. Ct.* (2007) 42 Cal.4th 278, 297. "Given the authority with which they are entrusted, the need for transparency, accountability and public access to information is particularly acute when the information sought involves the conduct of police officers." *Pasadena Police Officers Association v. Sup. Ct.* (2015) 240 Cal.App.4th 268, 283.

PC 11105 and PC 13300 Are Not Applicable to the Information Requested

Penal Code section 11105 and 13300 are unavailing in this request. Penal Code 11105 does not apply to local agencies. *See* Penal Code section 11105(a)(2)(B) (section "does not refer to records and data compiled by criminal justice agencies other than the Attorney General"). Penal Code section 13300 applies to requests for the complete criminal history of an identified individual, which is not sought here. *See* Penal Code § 13300(a)(1) (section governs disclosure of the "master record" of information about an individual's criminal history).

PC13202 Mandates the Release of This Data to Requestor as a Bona Fide Researcher

PC13202 holds that "Notwithstanding subdivision (g) of Section 11105 and subdivision (a) of Section 13305, every public agency or bona fide research body immediately concerned with the prevention or control of crime, the quality of criminal justice, or the custody or correction of offenders may be provided with such criminal offender record information as is required for the performance of its duties, provided that any material identifying individuals is not transferred, revealed, or used for other than research or statistical activities and reports or publications derived therefrom do not identify specific individuals, and provided that such agency or body pays the cost of the processing of such data as determined by the Attorney General."

cost of the processing of such data as determined by the Attorney General."